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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,391	10/22/2001	Matthias Bienmuller	Mo-6704/LeA 34,	1055
157	7590	05/06/2004	EXAMINER	
BAYER POLYMERS LLC			YOON, TAE H	
100 BAYER ROAD			ART UNIT	
PITTSBURGH, PA 15205			PAPER NUMBER	

1714

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/014,391

Applicant(s)

BIENMULLER ET AL.

Examiner

Tae H Yoon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The table 1 on page 27 is objected since percent and elongation at break values for Ex.1 and Ex.2 are typed in two lines, and thus is confusing. Also. The line reciting comparative examples are inconsistent. For example, ".1" is in second line for "Comp. 1", and "ComP 4" and "Comp 5" are seen.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Idel et al (US 5,231,124).

Rejection is maintained for reason of record and following.

The examiner believes that overlapping range of about 5.5% (4.1-9.5/2-100) is anticipation. Applicant's assertion based on the greater elongation at break after storage in steam for 240 hours has little probative value in claims 1-4 and 7-16 since such limitation is not required. With respect to 17, there is no example showing the claimed outer limit, 0.041 and 0.095 pbw of a phosphorous acid ester, and thus

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applicant's assertion also has little probative value. Applicant teaches that Comp. 3 with 0.04 pbw of a phosphorous acid ester yields a lower value of an elongation at break after storage in steam for 240 hours, but there is no evidence that a composition with **0.041** pbw of a phosphorous acid ester would yield higher value. Also, Ex. 1 ($99.95+0.06=100.01$) and 2 ($99.94+0.07=100.01$) have the total amount higher than 100 % and thus they lack any probative value.

Also, the recitation of "consisting essentially of" alone cannot overcome the rejection based on the art reciting "comprising". See *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA, 1964); *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461 (CCPA 1976); *In re Janakirama-Rao*, 317 F.2d 951, 137 USPQ 893 (CCPA 1963); When applicant contends that modifying components in the reference composition are excluded by the recitation of "consisting essentially of", applicant has the burden of showing the basic and novel characteristics of his composition - i.e. a showing that the introduction of these components would materially change the characteristics of applicant's composition.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as obvious over Idel et al (US 5,231,124) and Magerstedt et al (US 5,726,227).

Rejection is maintained for reason of record and above.

Magerstedt et al teach the instant amount of fillers and reinforcing materials and flame retardant additives and oxetanyl group for esters of phosphorous acid. Thus, the

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use of such conventional additives and amounts thereof in any polymeric composition would be obvious.

Even though Magerstedt et al does not teach polyalkylene terephthlate, Magerstedt et al do teach a polymer having polyester units at col. 4, line 53.

Claims 1-4, 10-12, and 14-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 26 15 341.

Rejection is maintained for reason of record and the same reason given above.

Claims 1-12 and 14-17 are rejected under 35 U.S.C. 103(a) as obvious over DE 26 15 341 and Magerstedt et al (US 5,726,227).

Rejection is maintained for reason of record and the same reason given above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tae H Yoon
Primary Examiner
Art Unit 1714

THY/May 3, 2004